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The Lundy Packing Company, Inc. and United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO. Case 12-CA-16618 (formerly 11-CA-16222)

December 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND TRUESDALE

On October 19, 1994, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the request of the United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO (the Unions) to bargain following the Unions' certification in Case 12-RC-7606. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On November 14, 1994, the General Counsel filed a Motion for Summary Judgment. On November 17, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On December 14, 1994, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer and its response to the notice to show cause, the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its objections to the election, the Board's unit determination, the failure of the Board to dismiss the petition for a lack of showing of interest, the excessive turnover in the bargaining unit during the period of time prior to the issuance of the Board's decision, and for all of the other reasons advanced during the underlying representation proceeding in Case 12-RC-7606.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any

special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, The Lundy Packing Company, Inc., a North Carolina corporation, with an office and place of business in Clinton, North Carolina, has been engaged in the processing and sale of pork and pork products. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, purchased and received at its Clinton, North Carolina facility goods valued in excess of \$50,000 directly from points located outside the State of North Carolina. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Unions are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held June 3, 1993, the Unions were certified on September 2, 1994,¹ as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees, janitorial employees, condensate drivers, waste management operators, raw material handler/cleaners, stockers, emergency room technicians, first aid attendants, kill gang leaders, and plant clericals, including inventory control section leaders, office clerks B & C (inventory control), distribution service section leaders, office supplies section leaders, and office clerks A, B & C (supplies/distribution) employed by the Employer at its Clinton, North Carolina facility, but excluding long-haul drivers, co-drivers, short-haul drivers, sales route drivers, permanent livestock drivers, temporary livestock drivers, outside buyers, hog buyers, assistant hog buyers, assistant hog buyers p.m., tire changers, vehicle mechanics, vehicle refrigeration mechanics, laborers (garage a.m. and p.m.), industrial engineers, industrial engineer trainees, laboratory technicians, quality assurance technicians, temporary management train-

¹ 314 NLRB 1042.

ees I, process sales coordinators, trip audit entry section leaders, office clericals, confidential employees, guards and supervisors as defined in the Act.

The Unions continue to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since September 7, 1994, the Unions have requested the Respondent to bargain, and, since September 7, 1994, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after September 7, 1994, to bargain with the Unions as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Unions, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Unions. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, The Lundy Packing Company, Inc., Clinton, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO, as the exclusive bargaining representative of the employees in the following bargaining unit:

All production and maintenance employees, janitorial employees, condensate drivers, waste management operators, raw material handler/cleaners, stockers, emergency room technicians, first aid attendants, kill gang leaders, and plant clericals, including inventory control section leaders, office clerks B & C (inventory control), distribution service section leaders, office supplies section leaders, and office clerks A, B & C (supplies/distribution) employed by the Employer at its Clinton, North Carolina facility, but excluding long-haul drivers, co-drivers, short-haul drivers, sales route drivers, permanent livestock drivers, temporary livestock drivers, outside buyers, hog buyers, assistant hog buyers, assistant hog buyers p.m., tire changers, vehicle mechanics, vehicle refrigeration mechanics, laborers (garage a.m. and p.m.), industrial engineers, industrial engineer trainees, laboratory technicians, quality assurance technicians, temporary management trainees I, process sales coordinators, trip audit entry section leaders, office clericals, confidential employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Unions as the exclusive representative of the employees in the unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Clinton, North Carolina, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 12 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. December 30, 1994

William B. Gould IV,	Chairman
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James M. Stephens,	Member
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John C. Truesdale,	Member
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(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Food and Commercial Workers Union, Local 204, AFL-CIO, and International Union of Operating Engineers, Local 465, AFL-CIO as the exclusive representative of the employees in the following bargaining unit:

All production and maintenance employees, janitorial employees, condensate drivers, waste management operators, raw material handler/cleaners, stockers, emergency room technicians, first aid attendants, kill gang leaders, and plant clericals, including inventory control section leaders, office clerks B & C (inventory control), distribution service section leaders, office supplies section leaders, and office clerks A, B & C (supplies/distribution) employed by us at our Clinton, North Carolina facility, but excluding long-haul drivers, co-drivers, short-haul drivers, sales route drivers, permanent livestock drivers, temporary livestock drivers, outside buyers, hog buyers, assistant hog buyers, assistant hog buyers p.m., tire changers, vehicle mechanics, vehicle refrigeration mechanics, laborers (garage a.m. and p.m.), industrial engineers, industrial engineer trainees, laboratory technicians, quality assurance technicians, temporary management trainees I, process sales coordinators, trip audit entry section leaders, office clericals, confidential employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Unions and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

THE LUNDY PACKING COMPANY, INC.